

FIRST REGULAR SESSION

SENATE BILL NO. 31

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NODLER.

Pre-filed December 1, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

0313S.011

AN ACT

To repeal sections 327.011, 327.111, 327.181, 327.201, 327.291, 327.441, 327.633, and 621.045, RSMo, and to enact in lieu thereof seven new sections relating to architects, professional engineers, land surveyors, and landscape architects, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 327.011, 327.111, 327.181, 327.201, 327.291, 327.441, 2 327.633, and 621.045, RSMo, are repealed and seven new sections enacted in lieu 3 thereof, to be known as sections 327.011, 327.076, 327.077, 327.078, 327.181, 4 327.441, and 621.045, to read as follows:

327.011. As used in this chapter, the following words and terms shall have 2 the meanings indicated:

3 (1) "Accredited degree program from a school of architecture", a degree 4 from any school or other institution which teaches architecture and whose 5 curricula for the degree in question have been, at the time in question, certified 6 as accredited by the National Architectural Accrediting Board;

7 (2) "Accredited school of landscape architecture", any school or other 8 institution which teaches landscape architecture and whose curricula on the 9 subjects in question are or have been at the times in question certified as 10 accredited by the Landscape Architecture Accreditation Board of the American 11 Society of Landscape Architects;

12 (3) "Accredited school of engineering", any school or other institution 13 which teaches engineering and whose curricula on the subjects in question are or 14 have been, at the time in question certified as accredited by the engineering 15 accreditation commission of the accreditation board for engineering and

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 technology or its successor organization;

17 (4) "Architect", any person authorized pursuant to the provisions of this
18 chapter to practice architecture in Missouri, as the practice of architecture is
19 defined in section 327.091;

20 (5) "Board", the Missouri board for architects, professional engineers,
21 professional land surveyors and landscape architects;

22 (6) "Corporation", any general business corporation, professional
23 corporation or limited liability company;

24 (7) ["Department", the department of economic development;

25 (8) "Division", the division of professional registration in the department
26 of economic development;

27 (9)] "Landscape architect", any person licensed pursuant to the provisions
28 of sections 327.600 to 327.635 who is qualified to practice landscape architecture
29 by reason of special knowledge and the use of biological, physical, mathematical
30 and social sciences and the principles and methods of analysis and design of the
31 land, has demonstrated knowledge and ability in such areas, and has been duly
32 licensed as a landscape architect by the board on the basis of professional
33 education, examination and experience in landscape architecture;

34 [(10)] (8) "Partnership", any partnership or limited liability partnership;

35 (9) "Licensee", a person licensed to practice any profession
36 regulated under this chapter or a corporation authorized to practice
37 any such profession;

38 [(11)] (10) "Person", any person, corporation, firm, partnership,
39 association or other entity;

40 [(12)] (11) "Professional engineer", any person authorized pursuant to
41 the provisions of this chapter to practice as a professional engineer in Missouri,
42 as the practice of engineering is defined in section 327.181;

43 [(13)] (12) "Professional land surveyor", any person authorized pursuant
44 to the provisions of this chapter to practice as a professional land surveyor in
45 Missouri as the practice of land surveying is defined in section 327.272.

327.076. 1. Any person who practices architecture, engineering,
2 land surveying, or landscape architecture, as defined in sections
3 327.011 to 327.635, or who holds himself or herself out as able to
4 practice such profession and who is not the holder of a currently valid
5 license or certificate of authority in Missouri, and who is not exempt
6 from holding such a license or certificate, is guilty of a class A

7 misdemeanor. As used in this section "practice" shall not include the
8 rendering of opinions or giving of testimony in a civil or criminal
9 proceeding by a licensed professional.

10 2. The board may cause a complaint to be filed with the
11 administrative hearing commission, as provided in chapter 621, RSMo,
12 against any unlicensed person for any one or any combination of the
13 following causes:

14 (1) Engages in or offers to render or engage in the practice of
15 architecture, professional engineering, land surveying, or landscape
16 architecture;

17 (2) Uses or employs titles defined and protected by this chapter,
18 or implies authorization to provide or offer professional services, or
19 otherwise uses or advertises any title, word, figure, sign, card,
20 advertisement, or other symbol or description tending to convey the
21 impression that the person is licensed or holds a certificate of
22 authority to practice architecture, professional engineering, land
23 surveying, or landscape architecture;

24 (3) Presents or attempts to use another person's license, seal, or
25 certificate of authority as his or her own;

26 (4) Attempts to use an expired, suspended, revoked, or
27 nonexistent license or certificate of authority;

28 (5) Affixes his or her or another architect's seal on any plans,
29 drawings, specifications or reports which have not been prepared by
30 such person or under such person's immediate personal supervision
31 care;

32 (6) Gives false or forged evidence of any kind to the board or any
33 member of the board in obtaining or attempting to obtain a certificate
34 of licensure in this state or any other state or jurisdiction;

35 (7) Knowingly aids or abets an unlicensed or unauthorized
36 person who engages in any prohibited activity identified in this
37 subsection;

38 (8) Violates any provision of the code of professional conduct or
39 other rule adopted by the board;

40 (9) Violates any provision of subsection 2 of section 327.441.

41 3. When reviewing complaints against unlicensed persons, the
42 board may initiate an investigation and take all measures necessary to
43 find the facts of any potential violation, including issuing subpoenas to

44 **compel the attendance and testimony of witnesses and the disclosure**
45 **of evidence, and may request the attorney general to bring an action to**
46 **enforce the subpoena.**

47 **4. If the board files a complaint with the administrative hearing**
48 **commission, the proceedings shall be conducted in accordance with the**
49 **provisions of chapter 621, RSMo. Upon a finding by the administrative**
50 **hearing commission that the grounds provided in subsection 2 of this**
51 **section for disciplinary action are met, the board may, either singularly**
52 **or in combination with other provisions of this chapter, impose a civil**
53 **penalty as provided for in section 327.077 against the person named in**
54 **the complaint.**

327.077. 1. In disciplinary actions against licensed or unlicensed
2 **persons, the board may issue an order imposing a civil penalty.**

3 **2. A civil penalty imposed under this section shall not exceed**
4 **five thousand dollars for each offense. Each day of a continued**
5 **violation constitutes a separate offense, with a maximum penalty of**
6 **twenty-five thousand dollars. In determining the amount of penalty to**
7 **be imposed, the board may consider any of the following:**

8 **(1) Whether the amount imposed will be a substantial deterrent**
9 **to the violation;**

10 **(2) The circumstances leading to the violation;**

11 **(3) The severity of the violation and the risk of harm to the**
12 **public;**

13 **(4) The economic benefits gained by the violator as a result of**
14 **noncompliance;**

15 **(5) The interest of the public.**

16 **3. Any final order imposing a civil penalty is subject to judicial**
17 **review upon the filing of a petition under section 536.100, RSMo, by any**
18 **person subject to the penalty.**

19 **4. Payment of a civil penalty shall be made within sixty days of**
20 **filing the order, or if the order is stayed pending an appeal within ten**
21 **days after the court enters a final judgment in favor of the board. If**
22 **the penalty is not timely paid, the board shall notify the attorney**
23 **general. The attorney general may commence an action to recover the**
24 **amount of the penalty, including reasonable attorney fees and costs and**
25 **a surcharge of fifteen percent of the penalty plus ten percent per**
26 **annum on any amounts owed. In such action, the validity and**

27 **appropriateness of the final order imposing the civil penalty shall not**
28 **be subject to review.**

29 **5. An action to enforce an order under this section may be joined**
30 **with an action for an injunction.**

31 **6. Any offer of settlement to resolve a civil penalty under this**
32 **section shall be in writing, state that an action for imposition of a civil**
33 **penalty may be initiated by the attorney general representing the**
34 **board under this section, and identify any dollar amount as an offer of**
35 **settlement, which shall be negotiated in good faith through conference,**
36 **conciliation, and persuasion.**

37 **7. Failure to pay a civil penalty by any person licensed under**
38 **this chapter shall be grounds for refusing to renew a license or**
39 **certificate of authority.**

40 **8. Penalties collected under this section shall be handled in**
41 **accordance with section 7 of article IX of the Missouri Constitution and**
42 **shall be deposited in the state general revenue fund. Such penalties**
43 **shall not be considered a charitable contribution for tax purposes.**

327.078. 1. After determination that a licensee or nonlicensee has
2 **violated this chapter or a rule promulgated under this chapter, the**
3 **board may assess the licensee or nonlicensee with its reasonable costs**
4 **and expenses incurred in conducting the investigation and**
5 **administrative hearing.**

6 **2. All moneys collected under this section shall be deposited in**
7 **the fund established in section 327.081 and shall be used by the board**
8 **to defray its expenses in connection with disciplinary investigations**
9 **and hearings.**

327.181. 1. Any person practices in Missouri as a professional engineer
2 **who renders or offers to render or holds himself or herself out as willing or able**
3 **to render any service or creative work, the adequate performance of which**
4 **requires engineering education, training, and experience in the application of**
5 **special knowledge of the mathematical, physical, and engineering sciences to such**
6 **services or creative work as consultation, investigation, evaluation, planning and**
7 **design of engineering works and systems, engineering teaching of advanced**
8 **engineering subjects or courses related thereto, engineering surveys, the**
9 **coordination of services furnished by structural, civil, mechanical and electrical**
10 **engineers and other consultants as they relate to engineering work and the**
11 **inspection of construction for the purpose of compliance with drawings and**

12 specifications, any of which embraces such service or work either public or
13 private, in connection with any utilities, structures, buildings, machines,
14 equipment, processes, work systems or projects and including such architectural
15 work as is incidental to the practice of engineering; or who uses the title
16 "professional engineer" or "consulting engineer" or the word "engineer" alone or
17 preceded by any word indicating or implying that such person is or holds himself
18 or herself out to be a professional engineer, or who shall use any word or words,
19 letters, figures, degrees, titles or other description indicating or implying that
20 such person is a professional engineer or is willing or able to practice engineering.

21 **2. Notwithstanding any provision of subsection 1 of this section,**
22 **any person using the word "engineer", "engineers", or "engineering",**
23 **alone or preceded by any word, or in combination with any words, may**
24 **do so without being subject to disciplinary action by the board so long**
25 **as such use is reflective of that person's profession or vocation and is**
26 **clearly not indicating or implying that such person is holding himself**
27 **or herself out as being a professional engineer or is willing or able to**
28 **practice engineering as defined in this section.**

327.441. 1. The board may refuse to issue any license or certificate of
2 authority required pursuant to this chapter for one or any combination of causes
3 stated in subsection 2 of this section. The board shall notify the applicant in
4 writing of the reasons for the refusal and shall advise the applicant of the
5 applicant's right to file a complaint with the administrative hearing commission
6 as provided by chapter 621, RSMo.

7 2. The board may cause a complaint to be filed with the administrative
8 hearing commission as provided by chapter 621, RSMo, against any holder of any
9 license or certificate of authority required by this chapter or any person who has
10 failed to renew or has surrendered such person's license or certificate of
11 authority, for any one or any combination of the following causes:

12 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or
13 alcoholic beverage to an extent that such use impairs a person's ability to perform
14 the work of any profession licensed or regulated by this chapter;

15 (2) The person has been finally adjudicated and found guilty, or entered
16 a plea of guilty or nolo contendere, in a criminal prosecution under the laws of
17 any state or of the United States, for any offense reasonably related to the
18 qualifications, functions or duties of any profession licensed or regulated under
19 this chapter, for any offense an essential element of which is fraud, dishonesty

20 or an act of violence, or for any offense involving moral turpitude, whether or not
21 sentence is imposed;

22 (3) Use of fraud, deception, misrepresentation or bribery in securing any
23 license or certificate of authority issued pursuant to this chapter or in obtaining
24 permission to take any examination given or required pursuant to this chapter;

25 (4) Obtaining or attempting to obtain any fee, charge, tuition or other
26 compensation by fraud, deception or misrepresentation;

27 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation
28 or dishonesty in the performance of the functions or duties of any profession
29 licensed or regulated by this chapter;

30 (6) Violation of, or assisting or enabling any person to violate, any
31 provision of this chapter, or of any lawful rule or regulation adopted pursuant to
32 this chapter;

33 (7) Impersonation of any person holding a license or certificate of
34 authority, or allowing any person to use his or her license or certificate of
35 authority, or diploma from any school;

36 (8) Disciplinary action against the holder of a license or a certificate of
37 authority, or other right to practice any profession regulated by this chapter
38 granted by another state, territory, federal agency or country upon grounds for
39 which revocation or suspension is authorized in this state;

40 (9) A person is finally adjudged incapacitated or disabled by a court of
41 competent jurisdiction;

42 (10) Assisting or enabling any person to practice or offer to practice any
43 profession licensed or regulated by this chapter who is not licensed and currently
44 eligible to practice pursuant to this chapter;

45 (11) Issuance of a professional license or a certificate of authority based
46 upon a material mistake of fact;

47 (12) Failure to display a valid license or certificate of authority if so
48 required by this chapter or any rule promulgated pursuant to this chapter;

49 (13) Violation of any professional trust or confidence;

50 (14) Use of any advertisement or solicitation which is false, misleading or
51 deceptive to the general public or persons to whom the advertisement or
52 solicitation is primarily directed.

53 3. After the filing of such complaint, the proceedings shall be conducted
54 in accordance with the provisions of chapter 621, RSMo. Upon a finding by the
55 administrative hearing commission that the grounds, provided in subsection 2 of

56 this section, for disciplinary action are met, the board may, singly or in
 57 combination, censure or place the person named in the complaint on probation on
 58 such terms and conditions as the board deems appropriate for a period not to
 59 exceed five years, or may suspend, for a period not to exceed three years, **or**
 60 **order a civil penalty under section 327.077**, or revoke the license or
 61 certificate of authority of the person named in the complaint.

621.045. 1. The administrative hearing commission shall conduct
 2 hearings and make findings of fact and conclusions of law in those cases when,
 3 under the law, a license issued by any of the following agencies may be revoked
 4 or suspended or when the licensee may be placed on probation or when an agency
 5 refuses to permit an applicant to be examined upon his qualifications or refuses
 6 to issue or renew a license of an applicant who has passed an examination for
 7 licensure or who possesses the qualifications for licensure without examination:

- 8 Missouri State Board of Accountancy
- 9 Missouri **State** Board [of Registration] for Architects, Professional
 10 Engineers [and], **Professional Land Surveyors and Landscape Architects**
- 11 Board of Barber Examiners
- 12 Board of Cosmetology
- 13 Board of Chiropody and Podiatry
- 14 Board of Chiropractic Examiners
- 15 Missouri Dental Board
- 16 Board of Embalmers and Funeral Directors
- 17 Board of Registration for the Healing Arts
- 18 Board of Nursing
- 19 Board of Optometry
- 20 Board of Pharmacy
- 21 Missouri Real Estate Commission
- 22 Missouri Veterinary Medical Board
- 23 Supervisor of Liquor Control
- 24 Department of Health and Senior Services
- 25 Department of Insurance
- 26 Department of Mental Health.

27 2. If in the future there are created by law any new or additional
 28 administrative agencies which have the power to issue, revoke, suspend, or place
 29 on probation any license, then those agencies are under the provisions of this law.

30 3. **The administrative hearing commission is authorized to**

31 **conduct hearings and make findings of fact and conclusions of law in**
32 **those cases brought by the Missouri state board for architects,**
33 **professional engineers, professional land surveyors and landscape**
34 **architects against unlicensed persons under section 327.076, RSMo.**

35 4. Notwithstanding any other provision of this section to the contrary,
36 after August 28, 1995, in order to encourage settlement of disputes between any
37 agency described in subsection 1 or 2 of this section and its licensees, any such
38 agency shall:

39 (1) Provide the licensee with a written description of the specific conduct
40 for which discipline is sought and a citation to the law and rules allegedly
41 violated, together with copies of any documents which are the basis thereof and
42 the agency's initial settlement offer, or file a contested case against the licensee;

43 (2) If no contested case has been filed against the licensee, allow the
44 licensee at least sixty days, from the date of mailing, to consider the agency's
45 initial settlement offer and to contact the agency to discuss the terms of such
46 settlement offer;

47 (3) If no contested case has been filed against the licensee, advise the
48 licensee that the licensee may, either at the time the settlement agreement is
49 signed by all parties, or within fifteen days thereafter, submit the agreement to
50 the administrative hearing commission for determination that the facts agreed
51 to by the parties to the settlement constitute grounds for denying or disciplining
52 the license of the licensee; and

53 (4) In any contact pursuant to this subsection by the agency or its counsel
54 with a licensee who is not represented by counsel, advise the licensee that the
55 licensee has the right to consult an attorney at the licensee's own expense.

56 [4.] 5. If the licensee desires review by the administrative hearing
57 commission pursuant to subdivision (3) of subsection [3] 4 of this section at any
58 time prior to the settlement becoming final, the licensee may rescind and
59 withdraw from the settlement and any admissions of fact or law in the agreement
60 shall be deemed withdrawn and not admissible for any purposes under the law
61 against the licensee. Any settlement submitted to the administrative hearing
62 commission shall not be effective and final unless and until findings of fact and
63 conclusions of law are entered by the administrative hearing commission that the
64 facts agreed to by the parties to the settlement constitute grounds for denying or
65 disciplining the license of the licensee.

[327.111. Any person who practices architecture in Missouri

2 as defined in section 327.091, who is not exempt pursuant to the
3 provisions of section 327.101, or who is not the holder of a
4 currently valid license or certificate of authority to practice
5 architecture in Missouri, or who pretends or attempts to use as
6 such person's own the license or certificate of authority or the seal
7 of another architect or who affixes his or her or another's
8 architect's seal on any plans, specifications, drawings, or reports
9 which have not been prepared by such person or under such
10 person's immediate personal supervision, is guilty of a class A
11 misdemeanor.]

[327.201. Any person who practices professional
2 engineering in Missouri as defined in section 327.181, who is not
3 exempt pursuant to the provisions of section 327.191 and who is
4 not the holder of a currently valid license or certificate of authority
5 to practice professional engineering in Missouri, or who pretends
6 or attempts to use as such person's own the license or certificate of
7 authority or the seal of another professional engineer, or who
8 affixes such person's or another professional engineer's seal on any
9 plans, specifications, drawings or reports which have not been
10 prepared by such person or under such person's immediate
11 personal supervision is guilty of a class A misdemeanor.]

[327.291. Any person who practices as a professional land
2 surveyor in Missouri as defined in section 327.272, who is not a
3 holder of a currently valid license or certificate of authority to
4 practice professional land surveying in Missouri, or who pretends
5 or attempts to use as such person's own the license or certificate of
6 authority or the seal of another professional land surveyor or who
7 affixes such person's or another professional land surveyor's seal
8 on any map, plat, survey or other document which has not been
9 prepared by such person or under such person's immediate
10 personal supervision is guilty of a class A misdemeanor.]

[327.633. Any person violating any of the provisions of
2 sections 327.600 to 327.635 is deemed guilty of a class A
3 misdemeanor.]